

1 Thomas W. McNamara (SBN 127280)
2 Daniel M. Benjamin (SBN 209240)
3 Chrysta L. Elliott (SBN 253298)
4 BALLARD SPAHR, LLP
5 655 West Broadway, Suite 1600
6 San Diego, California 92101
7 Telephone: (619) 696-9200
8 Facsimile: (619) 696-9269
9 Email: mcnamarat@ballardspahr.com
benjamind@ballardspahr.com
elliottc@ballardspahr.com

**Attorneys for Defendant
PLAYGROUND DESTINATION PROPERTIES, INC.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 DEAN BEAVER AND LAURIE BEAVER,
12 HUSBAND AND WIFE; STEVEN ADELMAN,
13 AN INDIVIDUAL; AND ABRAM AGHACHI,
14 AN INDIVIDUAL, DINESH GAUBA, AN
INDIVIDUAL, DEVIN KENNA AND
VERONICA KENNA, HUSBAND AND WIFE,
ON BEHALF OF THEMSELVES AND ALL
OTHERS SIMILARLY SITUATED.

) Case No. 11-CV-1842 DMS (KSC)
)
) **DEFENDANT PLAYGROUND**
) **DESTINATION PROPERTIES, INC.'S**
) **ANSWER TO PLAINTIFF'S SECOND**
) **AMENDED COMPLAINT**
)
) **JURY TRIAL DEMANDED**
)
) Related Case:
)
) *Salameh, et al. v. Tarsadia Hotels, et al.,*
) *Case No. 3:09-cv-02739-DMS-CAB*

Plaintiffs.

VS.

18 TARSADIA HOTELS, A CALIFORNIA
19 CORPORATION; TUSHAR PATEL, AN
20 INDIVIDUAL; B. U. PATEL, AN INDIVIDUAL;
21 GREGORY CASSERLY, AN INDIVIDUAL; 5TH
22 ROCK, LLC, A DELAWARE LIMITED
23 LIABILITY COMPANY; MKP ONE, LLC, A
24 CALIFORNIA LIMITED LIABILITY
25 COMPANY; GASLAMP HOLDINGS, LLC, A
CALIFORNIA LIMITED LIABILITY
COMPANY; PLAYGROUND DESTINATION
PROPERTIES, INC., A WASHINGTON
CORPORATION; JOSH ERSKINE, AN
INDIVIDUAL; SHANE ERSKINE, AN
INDIVIDUAL; and DOES 1 - 50, INCLUSIVE

Defendants

1 COMES NOW, Defendant Playground Destination Properties, Inc., a Washington
2 Corporation (“Defendant” or “Playground”), and severing from all other defendants, answers the
3 Plaintiff’s Second Amended Class Action Complaint (the “Complaint”) as follows:

INTRODUCTION

5 1. Playground denies the allegations contained in Paragraph 1 of the Complaint.
6 2. Playground denies the allegations contained in Paragraph 2 of the Complaint based
7 upon a lack of information and belief.

8 3. In response to Paragraph 3, Playground admits that Plaintiffs and other putative class
9 members executed Purchase Contracts for condominium units at the San Diego Hard Rock Hotel and
10 Condominiums (“Hard Rock Condominiums”) in 2006 and that escrow on units closed in or about
11 2007. Playground further admits that the copies of the contracts attached by the named Plaintiffs are
12 materially similar to those signed by the other purchasers to the best of Playground’s knowledge.
13 Playground denies all other allegations contained in Paragraph 3 of the Complaint.

4. Playground denies the allegations contained in Paragraph 4 of the Complaint.

15 5. In regard to the allegations of law stated in Paragraph 5, Playground states that the
16 law speaks for itself. Playground denies all allegations inconsistent with the laws referenced or that
17 incompletely state, or mischaracterize, the laws referenced, and denies all other allegations contained
18 in Paragraph 5 of the Complaint.

19 6. In regard to the allegations of law stated in Paragraph 6, Playground states that the
20 law speaks for itself. Playground denies all allegations inconsistent with the laws referenced or that
21 incompletely state, or mischaracterize, the laws referenced, and denies all other allegations contained
22 in Paragraph 6 of the Complaint.

23 7. In regard to the allegations of law stated in Paragraph 7, Playground states that the
24 law speaks for itself. Playground denies all allegations inconsistent with the laws referenced or that
25 incompletely state, or mischaracterize, the laws referenced, and denies all other allegations contained
26 in Paragraph 7 of the Complaint.

27 8. In regard to the allegations of law stated in Paragraph 8, Playground states that the
28 law speaks for itself. Playground denies all allegations inconsistent with the laws referenced or that

1 incompletely state, or mischaracterize, the laws referenced, and denies all other allegations contained
2 in Paragraph 8 of the Complaint.

3 9. Playground denies the allegations contained in Paragraph 9 of the Complaint.

4 10. In response to Paragraph 10, Playground admits that prospective purchasers of units at
5 the Hard Rock Condominiums received copies of a Public Report prior to executing Purchase
6 Contracts in 2006. In regard to the allegations of law stated in Paragraph 10, Playground states that
7 the law speaks for itself. Playground denies all allegations inconsistent with the laws referenced or
8 that incompletely state, or mischaracterize, the laws referenced, and denies all other allegations
9 contained in Paragraph 10 of the Complaint.

10 11. Playground denies the allegations contained in Paragraph 11 of the Complaint.

11 12. Playground denies the allegations contained in Paragraph 12 of the Complaint.

12 13. Playground denies the allegations contained in Paragraph 13 of the Complaint.

13 14. Playground denies the allegations contained in Paragraph 14 of the Complaint.

14 15. Playground denies the allegations contained in Paragraph 15 of the Complaint.

15 16. Playground denies the allegations contained in Paragraph 16 of the Complaint.

PLAINTIFFS

17 17. Playground denies the allegations contained in Paragraph 17 of the Complaint based
18 upon a lack of information and belief.

19 18. Playground denies the allegations contained in Paragraph 18 of the Complaint based
20 upon a lack of information and belief.

21 19. Playground denies the allegations contained in Paragraph 19 of the Complaint based
22 upon a lack of information and belief.

23 20. Playground denies the allegations contained in Paragraph 20 of the Complaint based
24 upon a lack of information and belief.

25 21. Playground denies the allegations contained in Paragraph 21 of the Complaint based
26 upon a lack of information and belief.

27

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DEFENDANTS

22. Playground denies the allegations contained in Paragraph 22 of the Complaint based upon a lack of information and belief.

23. Playground denies the allegations contained in Paragraph 23 of the Complaint based upon a lack of information and belief.

24. Playground denies the allegations contained in Paragraph 24 of the Complaint based upon a lack of information and belief.

25. Playground denies the allegations contained in Paragraph 25 of the Complaint based upon a lack of information and belief.

26. Playground denies the allegations contained in Paragraph 26 of the Complaint based upon a lack of information and belief.

27. Playground denies the allegations contained in Paragraph 27 of the Complaint based upon a lack of information and belief.

28. Playground denies the allegations contained in Paragraph 28 of the Complaint based upon a lack of information and belief.

29. Playground admits the allegations contained in Paragraph 29 of the Complaint.

30. Playground denies the allegations contained in Paragraph 30 of the Complaint based upon a lack of information and belief.

31. Playground denies the allegations contained in Paragraph 31 of the Complaint.

32. Playground denies the allegations contained in Paragraph 32 of the Complaint.

JURISDICTION AND VENUE

33. Playground admits that this action was first filed in state court and then removed, and that the Hard Rock Condominiums are located in San Diego County. Playground denies all other allegations contained in Paragraph 33 of the Complaint.

COMMON ALLEGATIONS

34. Playground admits that certain of the Developer Defendants developed the Hard Rock Condominiums at 205 Fifth Ave in San Diego, California beginning in or around 2005, which project has approximately 420 hotel-condominium units, including approximately 244 studios, 159

1 Hard Rock Suites, and 17 Rock Star Suites. Playground denies all other allegations contained in
2 Paragraph 34 of the Complaint.

3 35. In regard to the allegations of law stated in Paragraph 35, Playground states that the
4 law speaks for itself. Playground denies all allegations inconsistent with the laws referenced or that
5 incompletely state, or mischaracterize, the laws referenced, and denies all other allegations contained
6 in Paragraph 35 of the Complaint.

7 36. In regard to the allegations of law stated in Paragraph 36, Playground states that the
8 law speaks for itself. Playground denies all allegations inconsistent with the laws referenced or that
9 incompletely state, or mischaracterize, the laws referenced, and denies all other allegations contained
10 in Paragraph 36 of the Complaint.

11 37. In regard to the allegations of law stated in Paragraph 37, Playground states that the
12 law speaks for itself. Playground denies all allegations inconsistent with the laws referenced or that
13 incompletely state, or mischaracterize, the laws referenced, and denies all other allegations contained
14 in Paragraph 37 of the Complaint.

15 38. In regard to the allegations of law stated in Paragraph 38 (including but not limited to
16 footnote number 1 attached thereto), Playground states that the law speaks for itself. Playground
17 denies all allegations inconsistent with the laws referenced or that incompletely state, or
18 mischaracterize, the laws referenced, and denies all other allegations contained in Paragraph 38 of
19 the Complaint.

20 39. In response to Paragraph 39, Playground admits that California is certified under
21 ILSA by HUD. In regard to the allegations of law stated in Paragraph 39, Playground states that the
22 law speaks for itself. Playground denies all allegations inconsistent with the laws referenced or that
23 incompletely state, or mischaracterize, the laws referenced, and denies all other allegations contained
24 in Paragraph 39 of the Complaint.

25 40. In regard to the allegations of law stated in Paragraph 40, Playground states that the
26 law speaks for itself. Playground denies all allegations inconsistent with the laws referenced or that
27 incompletely state, or mischaracterize, the laws referenced, and denies all other allegations contained
28 in Paragraph 40 of the Complaint.

1 41. In regard to the allegations of law stated in Paragraph 41, Playground states that the
2 law speaks for itself. Playground denies all allegations inconsistent with the laws referenced or that
3 incompletely state, or mischaracterize, the laws referenced, and denies all other allegations contained
4 in Paragraph 41 of the Complaint.

5 42. In regard to the allegations of law stated in Paragraph 42, Playground states that the
6 law speaks for itself. Playground denies all allegations inconsistent with the laws referenced or that
7 incompletely state, or mischaracterize, the laws referenced, and denies all other allegations contained
8 in Paragraph 42 of the Complaint.

9 43. In regard to the allegations of law stated in Paragraph 43 (including but not limited to
10 footnote number 2 attached thereto), Playground states that the law speaks for itself. Playground
11 denies all allegations inconsistent with the laws referenced or that incompletely state, or
12 mischaracterize, the laws referenced, and denies all other allegations (including but not limited to
13 footnote number 2) contained in Paragraph 43 of the Complaint.

14 44. In regard to the allegations of law stated in Paragraph 44, Playground states that the
15 law speaks for itself. Playground denies all allegations inconsistent with the laws referenced or that
16 incompletely state, or mischaracterize, the laws referenced. Playground admits solely that section 8
17 of the contract has the language referenced, and denies all other allegations contained in Paragraph
18 44 of the Complaint.

19 45. Playground admits solely that section 9(a)(iii) of the contract has the language
20 referenced, and denies all other allegations contained in Paragraph 45 of the Complaint.

21 46. Playground denies the allegations contained in Paragraph 46 of the Complaint.

22 47. In regard to the allegations of law stated in Paragraph 47, Playground states that the
23 law speaks for itself. Playground denies all allegations inconsistent with the laws referenced or that
24 incompletely state, or mischaracterize, the laws referenced, and denies all other allegations contained
25 in Paragraph 47 of the Complaint.

26 48. In regard to the allegations of law stated in Paragraph 48, Playground states that the
27 law speaks for itself. Playground denies all allegations inconsistent with the laws referenced or that

28

1 incompletely state, or mischaracterize, the laws referenced, and denies all other allegations contained
2 in Paragraph 48 of the Complaint.

3 49. In regard to the allegations of law stated in Paragraph 49, Playground states that the
4 law speaks for itself. Playground denies all allegations inconsistent with the laws referenced or that
5 incompletely state, or mischaracterize, the laws referenced, and denies all other allegations contained
6 in Paragraph 49 of the Complaint.

7 50. Playground denies the allegations contained in Paragraph 50 of the Complaint.

8 51. Playground denies the allegations contained in Paragraph 51 of the Complaint.

9 52. In regard to the allegations of law stated in Paragraph 52, Playground states that the
10 law speaks for itself. Playground denies all allegations inconsistent with the laws referenced or that
11 incompletely state, or mischaracterize, the laws referenced, and denies all other allegations contained
12 in Paragraph 52 of the Complaint.

13 53. In regard to the allegations of law stated in Paragraph 53, Playground states that the
14 law speaks for itself. Playground denies all allegations inconsistent with the laws referenced or that
15 incompletely state, or mischaracterize, the laws referenced. Playground admits that Exhibit C has
16 the quoted language. Playground denies all other allegations contained in Paragraph 53 of the
17 Complaint.

18 54. Playground denies the allegations contained in Paragraph 54 of the Complaint,
19 including but not limited to denying footnote 3 attached thereto.

20 55. Playground denies the allegations contained in Paragraph 55 of the Complaint.

21 56. Playground denies the allegations contained in Paragraph 56 of the Complaint.

22 57. In regard to the allegations of law stated in Paragraph 57, Playground states that the
23 law speaks for itself. Playground denies all allegations inconsistent with the laws referenced or that
24 incompletely state, or mischaracterize, the laws referenced, and denies all other allegations contained
25 in Paragraph 57 of the Complaint.

26 58. In regard to the allegations of Paragraph 58, Playground admits solely that section
27 20(i) of the Purchase Contract has the language referenced. Playground denies all other allegations
28 in Paragraph 58.

1 59. Playground denies the allegations contained in Paragraph 59 of the Complaint.

2 60. In regard to the allegations of law stated in Paragraph 60, Playground states that the
3 law speaks for itself. Playground denies all allegations inconsistent with the laws referenced or that
4 incompletely state, or mischaracterize, the laws referenced, and denies all other allegations contained
5 in Paragraph 60 of the Complaint.

6 61. Playground denies the allegations contained in Paragraph 61 of the Complaint,
7 including but not limited to all subparagraphs thereof.

8 62. Playground denies the allegations contained in Paragraph 62 of the Complaint.

9 63. Playground denies the allegations contained in Paragraph 63 of the Complaint based
10 upon a lack of information and belief.

11 64. In response to the allegations of Paragraph 64, Playground admits solely that
12 sometime prior to, or in or about April 2006, the Developer Defendants provided Playground with
13 the Purchase Contract and Public Report. Playground denies all other allegations in Paragraph 64.

14 65. In response to the allegations of Paragraph 65, Playground admits that, prior to phase
15 one unit selection event on May 18, 2006, prospective buyers of Hard Rock Condominiums received
16 publications and packages of information including one entitled "Perspectives + Prices," and that a
17 pre-commitment package was generally required. The contents of these documents speak for
18 themselves. Playground denies all other allegations in Paragraph 65.

19 66. In response to the allegations of Paragraph 66, Playground admits that buyers who
20 appeared in person for the phase one selection event made their selection on May 18, 2006.
21 Playground denies all other allegations in Paragraph 66.

22 67. Playground denies the allegations contained in Paragraph 67 of the Complaint.

23 68. Playground denies the allegations contained in Paragraph 68 of the Complaint based
24 upon a lack of information and belief.

25 69. Playground denies the allegations contained in Paragraph 69 of the Complaint.

26 70. Playground denies the allegations contained in Paragraph 70 of the Complaint.

27 71. Playground denies the allegations contained in Paragraph 71 of the Complaint.

28 72. Playground denies the allegations contained in Paragraph 72 of the Complaint.

73. Playground denies the allegations contained in Paragraph 73 of the Complaint.
74. Playground denies the allegations contained in Paragraph 74 of the Complaint.
75. Playground denies the allegations contained in Paragraph 75 of the Complaint.
76. In response to the allegations of Paragraph 76, Playground admits solely that the *Belladis* action was filed on or about July 26, 2010. Playground denies the remaining allegations of Paragraph 76 based upon a lack of information and belief.

77. Playground denies the allegations contained in Paragraph 77 of the Complaint.
78. Playground denies the allegations contained in Paragraph 78 of the Complaint.
79. Playground denies the allegations contained in Paragraph 79 of the Complaint.
80. Playground denies the allegations contained in Paragraph 80 of the Complaint.
81. Playground denies the allegations contained in Paragraph 81 of the Complaint.
82. Playground denies the allegations contained in Paragraph 82 of the Complaint.

CLASS ACTION ALLEGATIONS

14 83. Playground denies the allegations contained in Paragraph 83 of the Complaint.

15 84. Playground denies the allegations contained in Paragraph 84 of the Complaint.

16 85. Playground denies the allegations contained in Paragraph 85 of the Complaint,

17 including but not limited to all subparagraphs therein.

18 86. Playground denies the allegations contained in Paragraph 86 of the Complaint.

19 87. Playground denies the allegations contained in Paragraph 87 of the Complaint,
20 including but not limited to all subparagraphs therein.

21 88. Playground denies the allegations contained in Paragraph 88 of the Complaint.

FIRST CAUSE OF ACTION

23 89. In response to Paragraph 89 incorporating by reference all prior Paragraphs,
24 Playground incorporates by reference all prior admissions and denials to those Paragraphs.

25 90. In response to Paragraph 90, this cause of action has been dismissed as to Playground
26 with prejudice and thus Playground denies this Paragraph.

27 91. In response to Paragraph 91, this cause of action has been dismissed as to Playground
28 with prejudice and thus Playground denies this Paragraph.

92. In response to Paragraph 92, this cause of action has been dismissed as to Playground with prejudice and thus Playground denies this Paragraph.

93. In response to Paragraph 93, this cause of action has been dismissed as to Playground with prejudice and thus Playground denies this Paragraph.

94. In response to Paragraph 94, this cause of action has been dismissed as to Playground with prejudice and thus Playground denies this Paragraph.

95. In response to Paragraph 95, this cause of action has been dismissed as to Playground with prejudice and thus Playground denies this Paragraph.

9 96. In response to Paragraph 96, this cause of action has been dismissed as to Playground
10 with prejudice and thus Playground denies this Paragraph.

11 97. In response to Paragraph 97, this cause of action has been dismissed as to Playground
12 with prejudice and thus Playground denies this Paragraph (including but not limited to denying all
13 subparagraphs thereof).

14 98. In response to Paragraph 98, this cause of action has been dismissed as to Playground
15 with prejudice and thus Playground denies this Paragraph.

16 99. In response to Paragraph 99, this cause of action has been dismissed as to Playground
17 with prejudice and thus Playground denies this Paragraph.

18 100. In response to Paragraph 100, this cause of action has been dismissed as to
19 Playground with prejudice and thus Playground denies this Paragraph.

20 101. In response to Paragraph 101, this cause of action has been dismissed as to
21 Playground with prejudice and thus Playground denies this Paragraph.

22 102. In response to Paragraph 102, this cause of action has been dismissed as to
23 Playground with prejudice and thus Playground denies this Paragraph.

24 103. In response to Paragraph 103, this cause of action has been dismissed as to
25 Playground with prejudice and thus Playground denies this Paragraph.

SECOND CAUSE OF ACTION

27 104. In response to Paragraph 104 incorporating by reference all prior Paragraphs,
28 Playground incorporates by reference all prior admissions and denials to those Paragraphs.

105. In response to Paragraph 105, this cause of action has been dismissed as to
Playground with prejudice and thus Playground denies this Paragraph.

106. In response to Paragraph 106, this cause of action has been dismissed as to
Playground with prejudice and thus Playground denies this Paragraph.

107. In response to Paragraph 107, this cause of action has been dismissed as to
Playground with prejudice and thus Playground denies this Paragraph.

108. In response to Paragraph 108, this cause of action has been dismissed as to
Playground with prejudice and thus Playground denies this Paragraph.

9 109. In response to Paragraph 109, this cause of action has been dismissed as to
10 Playground with prejudice and thus Playground denies this Paragraph.

THIRD CAUSE OF ACTION

12 110. In response to Paragraph 110 incorporating by reference all prior Paragraphs,
13 Playground incorporates by reference all prior admissions and denials to those Paragraphs.

14 111. In response to Paragraph 111, this cause of action has been dismissed as to
15 Playground with prejudice and thus Playground denies this Paragraph.

16 112. In response to Paragraph 112, this cause of action has been dismissed as to
17 Playground with prejudice and thus Playground denies this Paragraph.

18 113. In response to Paragraph 113, this cause of action has been dismissed as to
19 Playground with prejudice and thus Playground denies this Paragraph.

20 114. In response to Paragraph 114, this cause of action has been dismissed as to
21 Playground with prejudice and thus Playground denies this Paragraph.

FOURTH CAUSE OF ACTION

25 116. In response to Paragraph 116 incorporating by reference all prior Paragraphs,
26 Playground incorporates by reference all prior admissions and denials to those Paragraphs.

27 117. Playground denies the allegations contained in Paragraph 117 of the Complaint.

118. Playground denies the allegations contained in Paragraph 118 of the Complaint.

119. Playground denies the allegations contained in Paragraph 119 of the Complaint.

120. Playground denies the allegations contained in Paragraph 120 of the Complaint.

121. Playground denies the allegations contained in Paragraph 121 of the Complaint.

FIFTH CAUSE OF ACTION

122. In response to Paragraph 122 incorporating by reference all prior Paragraphs,

Playground incorporates by reference all prior admissions and denials to those Paragraphs.

123. In regard to the allegations of law stated in Paragraph 123, Playground states that the
allegations are false. Playground denies all allegations inconsistent with the laws referenced or that
fail to state, or mischaracterize, the laws referenced, and denies all other allegations contained
in Paragraph 123 of the Complaint.

124. Playground denies the allegations contained in Paragraph 124 of the Complaint.

125. Playground denies the allegations contained in Paragraph 125 of the Complaint.

126. Playground denies the allegations contained in Paragraph 126 of the Complaint.

127. Playground denies the allegations contained in Paragraph 127 of the Complaint.

128. Playground denies in its entirety Plaintiffs' Prayer for Relief.

129. Playground denies all allegations in the Complaint not expressly admitted herein.

130. Playground denies any and allegations made in the headings and subheadings used in
complaint.

AFFIRMATIVE DEFENSES

1. Plaintiffs' Complaint and the causes of action asserted therein fail to state a claim upon which relief can be granted.

2. Plaintiffs' Complaint and the causes of action asserted therein are barred by the applicable statute of limitations.

3. Plaintiffs failed to plead the negligent misrepresentation claim with the requisite particularity against Playground.

4. Plaintiffs' Complaint and the causes of action asserted therein are barred because there is a lack of privity.

5. Plaintiffs' Complaint and the causes of action asserted therein are barred because

1 Playground did not owe Plaintiffs a duty as to the misrepresentations and omissions alleged.

2 6. Plaintiffs' damages, if any, are the result of their own contributory or comparative
3 fault.

4 7. Plaintiffs' damages, if any, are in whole or in part the result of the fault of others,
5 whom Playground lacks the authority or ability to control.

6 8. Plaintiffs lack standing to assert the claims alleged or to enforce the rights sought to
7 be protected.

8 9. Plaintiffs' Complaint and the causes of action asserted therein are barred under the
9 doctrine of laches.

10 10. Plaintiffs' Complaint and the causes of action asserted therein are barred in whole or
11 in part by equitable doctrines of estoppel, unclean hands or waiver.

12 11. Any alleged representations made by Playground that form the basis of Plaintiffs'
13 Complaint were true and honest at the time made, and were not negligent. Said representations were
14 made, if any were, without knowledge of any falsity, and were not made with the intent to deceive or
15 damage Plaintiffs.

16 12. Plaintiffs' Complaint and the causes of action asserted therein are barred because
17 Playground did not have actual knowledge of the allegedly false or misleading nature of the
18 purported statements or of facts that allegedly gave Playground reasonable grounds to know that the
19 purported statements or omissions were false or misleading.

20 13. Plaintiffs' Complaint and the causes of action asserted therein are barred by a lack of
21 reliance on any alleged misstatements or omissions.

22 14. Plaintiffs' Complaint and the causes of action asserted therein are barred because
23 Playground, as the developer's agent, is not liable for the developer's actions, nor is the developer's
24 knowledge imputed to Playground.

25 15. Plaintiffs' Complaint and the causes of action asserted therein cannot be maintained
26 as a class action.

27 16. Plaintiffs' Complaint and the causes of action asserted therein are barred by the agent
28 immunity rule.

17. Plaintiffs' Complaint and the causes of action asserted therein are barred by
2 substantial compliance with the governing laws.

3 18. Plaintiffs' Complaint and the causes of action asserted therein are barred or limited by
4 Plaintiffs' failure to mitigate.

PRAAYER FOR RELIEF

6 || WHEREFORE, Defendant prays for judgment as follows:

7 1. For dismissal with prejudice of Plaintiffs' Complaint and all claims stated therein
8 against Playground;

9 2. For reasonable costs and attorneys' fees incurred herein; and

10 3. For other and further relief as the court deems just and proper.

Dated: May 16, 2012

BALLARD SPAHR LLP

By: /s/ Daniel M. Benjamin
Attorney for Playground Destination Properties, Inc.
Email: benjamind@ballardspahr.com